

Ms. Nancy E. Tribbensee
Senior Vice President and General Counsel
Arizona Board of Regents
2020 N. Central Avenue, Suite 230
Phoenix, Arizona 85004

RE: *State of Arizona ex rel. Mark Brnovich v. Arizona Board of Regents*

January 11, 2019

Dear Ms. Tribbensee:

I write because an attorney employed by your outside counsel, Perkins Coie,¹ has publicly stated that the Attorney General's Office has a conflict that precludes it from seeking judicial review of whether the Arizona Board of Regents ("ABOR") can lawfully use its tax-exempt status to take private developments off the property tax rolls. I am sure that we both share a common goal of getting an answer from the courts about whether this practice is lawful, and this letter should put to rest any ethical conflict issues raised.

The governing ethical rules and Arizona case law both make it clear that the Attorney General's Office is not treated the same as a private law firm for purposes of imputing conflicts, and that when the Attorney General has statutory authority to sue a state agency, it may do so even if the state agency is otherwise a client.

The Preamble to Rule 42 of the Rules of the Arizona Supreme Court (where our ethical rules are codified) specifically provides that government lawyers such as those in the Attorney General's Office have unique authority that private lawyers may not possess:

[L]awyers under the supervision of these officers [the attorney general and the state's attorney in state government] may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

Furthermore, the Arizona Supreme Court has acknowledged that the relationship between the Attorney General and a client agency is different from that of a private attorney and client. Even *Arizona State Land Department v. McFate* recognized that when authorized by a specific statute, the Attorney General's Office can sue a state agency it represents. Here, the Office initiated the property tax lawsuit both pursuant to the *quo warranto* statute, A.R.S. § 12-2041, and the statute providing that the Attorney General "shall prosecute in the name of this state all

¹ This same attorney appears to also be affiliated with ASU as an adjunct professor.

actions necessary to enforce” the property tax title. A.R.S. § 42-1004(E). These statutes provide a solid ethical basis for the Attorney General to file this lawsuit.

Moreover, as you know, this Office has not advised your client on any of the property transactions that are the subject of this lawsuit. ABOR is statutorily exempted from using this Office as its lawyer pursuant to A.R.S. § 41-192(D)(4). Due to this exemption, this Office has not provided legal advice to ABOR on matters relating to its property tax-related decisions. As a result, this Office possesses no confidential client information relevant to the matter. Although one limited exception exists to this Office’s representation of ABOR—in the context of risk management covered matters derivatively through its representation of ADOA—that representation is done by attorneys in a separate Division housed in a separate building. That Division has been screened from this and other litigation matters concerning ABOR.

Ultimately, the comments being made are problematic because they suggest that the hardworking government attorneys in this Office have somehow compromised their ethical obligations. I would hope that if officials affiliated with ABOR feel compelled to raise such allegations, they would raise them in court, or not at all.

This Office seeks judicial clarity on whether ABOR has exceeded its constitutional and statutory authority in approving the property deals at issue and looks forward to a robust discussion on the merits in the judicial forum where the matter was filed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Angela Paton', with a stylized, cursive script.

Angela Paton

Ethics Counsel

Office of the Arizona Attorney General